

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials in which an appeal lies.]

Appeals from conviction in contempt cases.

486. (1) Any person sentenced by any Court under section 480 or section 485, [or section 485A] may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. (1) Except as provided in sections 2\* \* 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court 3\* \* \*, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

## CHAPTER XXXVI.

### OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself 4\* \* a Presidency Magistrate 5\* \* \* or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or

\* Inserted by Act 26 of 1955, s. 91.

\* The figures "477" rep. by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 130.

\* The words "and the Recorder of Rangoon" rep. by the Lower Burma Courts Act, 1900 (6 of 1900).

\* The words "the District Magistrate" were deleted by Bom. 23 of 1951, s. 2 and Sch. Pt. I.

\* The words "a Sub-Divisional Magistrate" were deleted, *ibid.*

allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

such child, at such monthly rate not exceeding [five hundred, rupees] in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, or if so ordered from the date of the application for maintenance.

(3) If any person so ordered <sup>2</sup>[fails without sufficient cause] to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant <sup>Enforcement of order.</sup> for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

<sup>3</sup>[If a husband has contracted marriage with another wife or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him :]

<sup>4</sup>[Provided further, that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.]

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reasons she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any orders so made may be set aside for good cause shown on application made within three months from the date thereof.

<sup>1</sup> Substituted by Act 26 of 1255, s. 92, for "five hundred rupees".

<sup>2</sup> Substituted by Act 18 of 1923, s. 131, for "wilfully neglects".

<sup>3</sup> Added by Act 9 of 1949, s. 2.

<sup>4</sup> Inserted by Act 18 of 1923, s. 131.

1\* \* \* \* \*

¶[(7)] The Court in dealing with applications under this section shall have power to make such order as to costs as may be just.

¶[(8)] <sup>2</sup>[Proceedings under this section may be taken against any person] in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child.

Alteration in allowance.

489. <sup>3</sup>[(1)] On proof of a change in the circumstance of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit : Provided that if he increase the allowance the monthly rate of <sup>4</sup>[five hundred] rupees in the whole be not exceeded.

<sup>5</sup>[(2)] Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 488 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.]

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

## CHAPTER XXXVII.

### DIRECTIONS OF THE NATURE OF A *Habeas Corpus*.

Power to issue directions of the nature of a *habeas corpus*.

491. (1) <sup>6</sup>[Any High Court] may, whenever it thinks fit, direct—

(a) that a person within the limits of its <sup>7</sup>[appellate criminal jurisdiction] be brought up before the Court to be dealt with according to law ;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court ;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners <sup>8</sup>\* \* \* for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively ;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

<sup>1</sup> The original sub-section (7) was rep., and sub-sections (8) and (9) were re-numbered (7) and (8) respectively by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 131.

<sup>2</sup> Substituted by s. 131, *ibid.*, for "The accused may be proceeded against".

<sup>3</sup> Section 489 was re-numbered sub-section (1) of that section by s. 132, *ibid.*

<sup>4</sup> Substituted by Act 26 of 1955, s. 93, for "one hundred".

<sup>5</sup> Inserted by s. 132 of the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923).

<sup>6</sup> Substituted by the Criminal Law Amendment Act, 1923 (12 of 1923), s. 30, for "Any of the High Courts of Judicature at Fort William, Madras and Bombay".

<sup>7</sup> Substituted by s. 30, *ibid.*, for "ordinary original civil jurisdiction".

<sup>8</sup> The words "acting under the authority of any commission from the G. G. in C." rep. by the A.O. 1937.